

# **EXHIBIT 3**

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**Sent:** Tuesday, October 13, 2020 8:22 PM  
**To:** Eric Zepp; Rob Lopez; Xternal User - J Boyer; Karma Julianelli; bsweeney@hausfeld.com; Yonatan Even; Brent Byars; bens@hbsslaw.com; sstein@hausfeld.com; Gary Bornstein; paul.riehle@faegredrinker.com; Glen Summers; Xternal User - George Zelcs; Xternal User - Randall Ewing; steve@hbsslaw.com; tedw@hbsslaw.com; ekelly@sperling-law.com; John Karin; Lauren Moskowitz; Xternal User - Elizabeth McKenna; Wallner, Robert  
**Cc:** Shah, Sujal J.; Satia, Rishi P.; Naranjo, Minna Lo  
**Subject:** Epic/Carr/PSB et al. v. Google et al.  
**Attachments:** Play Litigation - Proposed Case Schedule.docx; Stipulated ESI Order - DRAFT\_10.13.2020.docx; Stipulated Protective Order - DRAFT\_10.13.2020.docx

Counsel:

As discussed during our call today, attached for your review are the following documents:

- Proposed case schedule
- Proposed ESI Protocol
- Proposed Protective Order

On the schedule, we added a blank column so that counsel for the developer plaintiffs can add their input. It would be ideal if we could all have the most up-to-date proposals in a master document before our next call, which is scheduled for Thursday at 9:30 a.m. pacific. Google of course reserves the right to modify its proposals. For example, if there are delays in the filing of the proposed consolidated complaint(s), that may impact some of the earlier dates in our proposed case schedule.

Thanks in advance for your review and consideration. Apologies if I inadvertently omitted lawyers from this email.

**Brian C. Rocca**

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[Counsel listed on signature pages]

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

EPIC GAMES, INC.,  
Plaintiff,

Case No. 3:20-cv-05671-JD

VS.

GOOGLE LLC et al.,  
Defendants.

Case No. 3:20-cv-05761-JD

MARY CARR, et al.,  
Plaintiffs,

vs.

GOOGLE LLC et al.,  
Defendants.

Case No. 3:20-cv-05792-JD

PURE SWEAT BASKETBALL, INC., et. al,  
Plaintiffs,

vs.

GOOGLE LLC et al.,  
Defendants.

Case No. 20-cv-06772-JD

PEEKYA SERVICES, INC., et. al,  
Plaintiffs.

vs.

GOOGLE LLC et al.,  
Defendants.

**[STIPULATED] ORDER RE:  
DISCOVERY OF ELECTRONICALLY  
STORED INFORMATION**

1                   **1. PURPOSE**

2                   This Order will govern discovery of electronically stored information (“ESI”) in this  
 3 case as a supplement to the Federal Rules of Civil Procedure, this Court’s Guidelines for the  
 4 Discovery of Electronically Stored Information, and any other applicable orders and rules.

5                   **2. COOPERATION**

6                   The parties are aware of the importance the Court places on cooperation and commit to  
 7 cooperate in good faith throughout the matter consistent with this Court’s Guidelines for the  
 8 Discovery of ESI.

9                   **3. PROPORTIONALITY**

10                  Parties are expected to use reasonable, good faith and proportional efforts to preserve,  
 11 identify and produce relevant information consistent with Fed. R. Civ. P. 26(b)(1)<sup>1</sup>. This  
 12 includes identifying appropriate limits to discovery, including limits on custodians,  
 13 identification of relevant subject matter, time periods for discovery and other parameters to  
 14 limit and guide preservation and discovery issues. A party’s meaningful compliance with this  
 15 order and efforts to promote efficiency and reduce costs will be considered in cost-shifting  
 16 determinations.

17                  **4. COST-SHIFTING**

18                  As in all cases, costs may be shifted for disproportionate ESI production requests  
 19 pursuant to Federal Rule of Civil Procedure 26. Likewise, a party’s nonresponsive or dilatory  
 20 discovery tactics are cost-shifting considerations.

21                  **5. LIAISON**

22                  The parties will identify liaisons to each other who are and will be knowledgeable about  
 23 and responsible for discussing their respective ESI. Each e-discovery liaison will be, or have  
 24 access to those who are, knowledgeable about the technical aspects of e-discovery, including  
 25 the location, nature, accessibility, format, collection, search methodologies, and production of  
 26

27

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28                  <sup>1</sup> Information can originate in any form, including ESI and paper, and is not limited to information created or stored  
 electronically.

1 ESI in this matter. The parties will rely on the liaisons, as needed, to confer about ESI and to  
 2 help resolve disputes without court intervention.

3 **5. PRESERVATION**

4 The parties have discussed their preservation obligations and needs and agree that  
 5 preservation of potentially relevant ESI will be reasonable and proportionate. To reduce the  
 6 costs and burdens of preservation and to ensure proper ESI is preserved, the parties agree that:

7 a) Only ESI created or received between \_\_\_\_\_ and \_\_\_\_\_ will be preserved;  
 8 b) The parties will discuss the types of ESI they believe should be preserved and  
 9 the custodians, or general job titles or descriptions of custodians, for whom they believe ESI  
 10 should be preserved, e.g., “HR head,” “scientist,” and “marketing manager.” The parties shall  
 11 add or remove custodians as reasonably necessary;

12 c) The parties will agree on the number of custodians per party for whom ESI will  
 13 be preserved;

14 d) These data sources are not reasonably accessible because of undue burden or  
 15 cost pursuant to Fed. R. Civ. P. 26(b)(2)(B) and ESI from these sources will be preserved  
 16 pursuant to normal business retention, but not searched, reviewed, or produced:

- 17 1. backup systems and/or tapes used for disaster recovery; and
- 18 2. systems, server and network logs; and
- 19 3. systems no longer in use that cannot be accessed.

20 e) Among the sources of data the parties agree are not reasonably accessible, the  
 21 parties agree not to preserve, search, or collect the following:

- 22 1. voice messages
- 23 2. information from handsets, mobile devices, personal digital assistants, and  
 24 tablets that is duplicative of information that resides in a reasonably  
 25 accessible data source;
- 26 3. instant messaging and chat application data;
- 27 4. automatically saved versions of documents and emails;
- 28 5. video and audio recordings;

6. deleted, slack, fragmented, or other data accessible only by forensics;
7. random access memory (RAM), temporary files, or other ephemeral data that are difficult to preserve without disabling the operating system;
8. on-line access data such as temporary internet files, history, cache, cookies, and the like;
9. dynamic fields of databases or log files that are not retained in the usual course of business; and
10. data in metadata fields that are frequently updated automatically, such as last opened dates.

## 6. SEARCH

a) The parties agree that in responding to an initial Fed. R. Civ. P. 34 request, or earlier if appropriate, they will meet and confer about methods to search ESI in order to identify ESI that is subject to production in discovery and filter out ESI that is not subject to discovery.

b) Each party will use its best efforts to filter out common system files and application executable files by using a commercially reasonable hash identification process. Hash values that may be filtered out during this process are located in the National Software Reference Library (“NSRL”) NIST hash set list. Additional culling of file types based on file header information may include, but are not limited to: Application Package File, Backup Files, Batch Files, Binary Disc Image, C++ File Formats, Cascading Style Sheet, Configuration File, Database File, Dictionary Files, Dynamic Link Library, Event Log Files, Executable Files, Hypertext Cascading Stylesheet, Java Archive Files, JavaScript files, JavaScript Source Code and Class Files, Macintosh Resource Fork Files, MP3 Files, MP4 Files, Package Manager Files, Program Files, Program Installers, Python Script Files, Quicktime Files, Shell Script Files, System or Temporary Files, Thumbnail Cache Files, Troff Files, TrueType Font Files, Video Media Files, Waveform Audio File Format, Windows Cabinet File, Windows Command Files, Windows File Shortcut, Windows Help Files, Windows Metafiles and Enhanced Metafiles, Windows Spool Files, Windows System File. Source code files will be provided according to the Protective Order and not included in custodial data productions.

c) A party is required to produce only a single copy of a responsive document, and a party may de-duplicate responsive ESI across Custodians. A party may also de-duplicate email threads and attachments as follows: In an email thread, only the most evolved responsive email in a thread will be produced. Where an earlier-in-thread email has a responsive attachment not contained within the most evolved responsive email, the most evolved earlier-in-thread email containing the attachment will also be produced along with its attachment.

d) If applicable, no provision of this Order affects the inspection or production of source code which will be collected and made available consistent with the Protective Order governing this case.

## 6. PRODUCTION FORMATS

The parties agree to produce documents in the formats described in Appendix 1 to this Order. If particular documents warrant a different format, the parties will cooperate to arrange for the mutually acceptable production of such documents. The parties agree not to degrade the searchability of documents as part of the document production process.

## 7. PHASING

When a party propounds discovery requests pursuant to Fed. R. Civ. P. 34, the parties agree to phase the production of ESI and will meet and confer regarding sources, custodians, and prioritization of phased productions.

## 8. DOCUMENTS PROTECTED FROM DISCOVERY

a) Pursuant to Fed. R. Evid. 502(d), the production of a privileged or work-product-protected document is not a waiver of privilege or protection from discovery in this case or in any other federal or state proceeding. For example, the mere production of privileged or work-product-protected documents in this case as part of a mass production is not itself a waiver in this case or in any other federal or state proceeding. A producing party may assert privilege or protection over produced documents at any time by notifying the receiving party in writing of the assertion of privilege or protection. After being notified, a party must promptly return or destroy the specified information and any copies it has and may not sequester, use or disclose the information until the claim is resolved. Information that contains privileged matter or

1 attorney work product shall be returned immediately if such information appears on its face or  
 2 if requested.

3       b)     Communications involving counsel that post-date the filing of the complaint  
 4 need not be placed on a privilege log. Communications may be identified on a privilege log by  
 5 category, rather than individually, if appropriate. The parties agree to meet and confer and agree  
 6 to reasonable proposals for minimizing the burden imposed by the process of providing a  
 7 privilege log.

8       c)     Activities undertaken in compliance with the duty to preserve information are  
 9 protected from discovery under Fed. R. Civ. P. 26(b)(3)(A) and (B).

10      d)     Nothing in this Agreement shall be interpreted to require disclosure of irrelevant  
 11 information or relevant information protected by the attorney-client privilege, work-product  
 12 doctrine, or any other applicable privilege or immunity. The parties do not waive any  
 13 objections to the production, discoverability, admissibility, or confidentiality of documents and  
 14 ESI.

15      **9. MODIFICATION**

16       This Stipulated Order may be modified by a Stipulated Order of the parties or by the Court  
 17 for good cause shown. Any such modified Stipulated Order will be titled sequentially as follows,  
 18 “First Modified Stipulated Order re: Discovery of Electronically Stored Information for Standard  
 19 Litigation,” and each modified Stipulated Order will supercede the previous Stipulated Order.

20  
 21      **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

1 Dated: October \_\_\_, 2020

2 By: /s/ Gary A. Bornstein

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16 Dated: October \_\_\_, 2020

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1 Dated: October \_\_\_, 2020

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16 *Counsel for Defendants Google LLC, Google Ireland Limited,*  
17 *Google Commerce Ltd., Google Asia Pacific Pte. Ltd. and*  
18 *Google Payment Corp.*

20 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

21 DATED: \_\_\_\_\_

22 HON. JAMES DONATO \_\_\_\_\_

23 United States District Court Judge

1

**APPENDIX 1**  
**PRODUCTION FORMAT AND METADATA**

2

3

1. **Production Components.** Productions shall include, single page TIFFs, Text Files, an  
4 ASCII delimited metadata file (.txt, .dat, or .csv) and an image load file that can be loaded  
4 into commercially acceptable production software (e.g., Concordance).

5

2. **Image Load File** shall contain the following comma-delimited fields: BEGBATES,  
6 VOLUME, IMAGE FILE PATH, DOCUMENT BREAK, FOLDER BREAK, BOX  
7 BREAK, PAGE COUNT.

8

3. **Metadata Fields and Metadata File.** Each of the metadata and coding fields set forth  
9 below that can be extracted shall be produced for each document. The parties are not  
10 obligated to populate manually any of the fields below if such fields cannot be extracted  
11 from a document, with the exception of the following: BEGBATES, ENDBATES,  
12 BEGATTACH, ENDATTACH, and CUSTODIAN. The metadata file shall be delimited  
13 according to the following characters:

14

- Delimiter = ¶ (ASCII:020)
- Text-Qualifier = ¢ (ASCII:254)
- New Line = ® (ASCII:174)
- Multi-value delimiter - ; (ASCII Code 059)

15

Field Name	Field Description
BEGBATES	Beginning Bates number as stamped on the production image
ENDBATES	Ending Bates number as stamped on the production image
BEGATTACH	First production Bates number of the first document in a family
ENDATTACH	Last production Bates number of the last document in a family
CUSTODIAN	Includes the Individual (Custodian) from whom the documents originated and all Individual(s) whose documents de-duplicated out (De-Duped Custodian).
SUBJECT	Subject line of email
TITLE	Title from properties of document
DATESENT	Date email was sent (format: MM/DD/YYYY)
TO	All recipients that were included on the "To" line of the email
FROM	The name and email address of the sender of the email

1	CC	All recipients that were included on the “CC” line of the email
2	BCC	All recipients that were included on the “BCC” line of the email
3	OWNER	Any value populated in the Owner field of the document properties
4	FILENAME	Filename of an electronic document (Edoc or attachment)
5	DATEMOD	Date an electronic document was last modified or created (format: MM/DD/YYYY) (Edoc or attachment)
6	DATECREATED	Date the document was created (format: MM/DD/YYYY) (Edoc or attachment)
7	NATIVELINK	Native File Link (Native Files only)
8	TEXTLINK	Link to text files

11

12 4. **TIFFs.** Documents that exist only in hard copy format shall be scanned and produced as  
 13 TIFFs. Unless excepted below, documents that exist as ESI shall be converted and produced  
 14 as TIFFs. Unless excepted below, single page Group IV TIFFs should be provided, at least  
 15 300 dots per inch (dpi) for all documents. Each TIFF image shall be named according to a  
 16 unique corresponding Bates number associated with the document. Each image shall be  
 17 branded according to the Bates number and the agreed upon confidentiality designation.  
 18 Original document orientation should be maintained (i.e., portrait to portrait and landscape  
 19 to landscape). TIFFs shall show all text and images that would be visible to a user of the  
 20 hard copy documents.

21

22 5. **Text Files.** A single multi-page text file shall be provided for each document, and the  
 23 filename should match its respective TIFF filename. A commercially acceptable technology  
 24 for optical character recognition “OCR” shall be used for all scanned, hard copy documents.  
 25 When possible, the text of native files should be extracted directly from the native file. Text  
 26 files will not contain the redacted portions of the documents and OCR text files will be  
 27 substituted instead of extracted text files for redacted documents. All documents shall be  
 28 produced with a link in the TextLink field.

29

30 6. **Image Load Files / Data Load Files.** Each TIFF in a production must be referenced in the  
 31 corresponding image load file. The total number of documents referenced in a production’s  
 32 data load file should match the total number of designated document breaks in the Image  
 33 Load file(s) in the production. The total number of pages referenced in a production’s image  
 34 load file should match the total number of TIFF files in the production. The total number of  
 35 documents in a production should match the total number of records in the data load file.

36

37 7. **Bates Numbering.** All images must be assigned a unique Bates number that is sequential

within a given document and across the production sets.

8. **Confidentiality Designation.** Responsive documents in TIFF format will be stamped with the appropriate confidentiality designations in accordance with the Protective Order in this matter. Each responsive document produced in native format will have its confidentiality designation identified in the filename of the native file.
9. **Redaction Of Information.** If documents are produced containing redacted information, an electronic copy of the original, unredacted data shall be securely preserved in such a manner so as to preserve without modification, alteration or addition the content of such data including any metadata therein.
10. **Native Files.** Spreadsheets (e.g., MS Excel, Google Sheets) and delimited text files (e.g. comma-separated value (.csv) files and tab-separated value (.tsv) files) shall be produced in either their native format or MS Excel. TIFF images need not be produced unless the files have been redacted, in which instance such files shall be produced in TIFF with OCR Text Files. A TIFF placeholder indicating that the document was provided in native format should accompany the database record. If a file has been redacted, TIFF images and OCR text of the redacted document will suffice in lieu of a native file and extracted text.
11. **Proprietary Files.** To the extent a response to discovery requires production of ESI accessible only through proprietary software, the parties should continue to preserve each version of such information. The parties shall meet and confer to finalize the appropriate production format.
12. **Production Media.** Documents shall be encrypted and produced on external hard drives, readily accessible computer(s) or other electronic media (“Production Media”). Each piece of Production Media shall identify a production number corresponding to the production volume (e.g., “VOL001,” “VOL002”), as well as the volume of the material in that production (e.g. “-001,” “-002”). Each piece of Production Media shall also identify: (1) the producing party’s name; (2) the production date; (3) the Bates Number range of the materials contained on the Production Media; and (4) the set(s) of requests for production for which the documents are being produced.